

03-25897

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

In Re:

Chapter 13 Case:  
Case Number BKY 03-30085-DDO

George Klauser  
Lyn Klauser,

Debtor(s)

**NOTICE OF HEARING AND MOTION  
FOR RELIEF FROM STAY**

To: The Debtor and other entities specified in Local Rule 9013-3(a).

1. Deutsche Bank Trust Company Americas, fka Bankers Trust Company, as Custodian moves the Court for relief requested below and gives Notice of Hearing.

2. The Court will hold a Hearing on this motion at 9:30 a.m., on July 7, 2004, in Courtroom No. 228A, at the United States Courthouse, at 316 North Robert Street, in St. Paul Minnesota.

3. Any response to this motion must be filed and delivered not later than July 1, 2004, which is three days before the time set for the hearing(excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than June 25, 2004, which is seven days before the time set for the hearing(excluding Saturdays, Sundays and holidays). UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

4. This court has jurisdiction over this motion pursuant to 28 U.S.C. §§157 and 1334, Bankruptcy Rule 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this Chapter 13 case was filed on January 6, 2003. The case is now pending in this court.

5. This Motion arises under 11 U.S.C. §362 and Bankruptcy Rule 4001. This motion is filed under Bankruptcy Rule 9014 and Local Rules 9013-1 - 9019-1(d). Movant Requests Relief with respect to exempt property of the debtor subject to a lien.

6. On November 29, 2001, George Klauser and Lyn Klauser made, executed and delivered to Saxon Mortgage, Inc. their Note (hereinafter referred to as the "Note"), in the original principal amount of \$373,500.00 bearing interest from the date thereof at the rate of 9.75% per annum until paid, payable in monthly installments of \$3,208.94 commencing on January 1, 2002 and on the first day of

each and every calendar month thereafter until the principal and interest were fully paid. A copy of the Note is attached hereto as Exhibit "A" and made a part thereof by reference.

7. On November 29, 2001, to secure the payment of the Note, George Klauser and Lyn Klauser executed and delivered to Saxon Mortgage, Inc. their Mortgage (hereinafter referred to as the "Mortgage"), mortgaging and conveying certain real estate in Scott County, Minnesota, legally described as follows:

Lot 4, Block 1, West Summit Oaks, Scott County, Minnesota

which property has an address of: 8615 154th Street West, Savage, MN 55378. The mortgage was filed for record in the office of the Recorder, County of Scott, on April 3, 2002, as Document No.A544250, and was subsequently assigned to Movant by assignment of mortgage. A copy of the mortgage and assignment are attached hereto as Exhibit "B" and made a part hereof by reference.

8. The debtors have filed a modified plan dated August 11, 2003, which was confirmed by subsequent Court Order. The plan provided, among other things that:

"5. Home Mortgages In Default [§1322(b)(5)] - The trustee will cure defaults on claims secured only by a security interest in real property that is the debtor's principal residence as follows. The debtor will maintain the regular payments which come due after that date the petition was filed. The creditors will retain their liens. The amounts of default are estimates only. The trustee will pay the actual amounts of default.

9. Notwithstanding the foregoing provisions of said plan, the debtors have not maintained current payments with respect to said note and mortgage, while this case is pending.

10. Debtors are in arrearage for monthly payments as shown below. The last payment received from Debtors was applied to the April, 2004 post-petition payment as that was the next payment due. Post-petition arrearage include the following:

2 payments @ \$3,807.34	\$7,614.68
2 late charges @ \$160.44	320.88
Attorneys Fees & Costs	<u>650.00</u>
TOTAL POST-PETITION	\$8,585.56

Through Debtors' failure to make current post-petition payments, amounts currently due and owing include the following:

Principal	\$368,038.12
Interest	14,977.69
Accumulated late fees	320.88
Attorneys Fees & Costs	<u>650.00</u>
TOTAL	\$383,986.69

11. Debtors have claimed said mortgaged property as exempt pursuant to 11 USC 522 (d) (1).

12. Debtors have represented the value of this property to be \$415,000.00 on the schedules which accompanied their petition.

They therefore, have no equity in this property by their own admission.

13. By reason of the foregoing, good cause exists to lift the automatic stay imposed by 11 USC section 362 to allow Movant to pursue its remedies under State Law.

14. **This is an attempt to collect a debt and any information obtained will be used for that purpose.** This notice is required by the provisions of the Fair Debt Collection Practices Act and does not imply that we are attempting to collect money from anyone who has discharged the debt under the Bankruptcy Laws of the United States.

Wherefore, Deutsche Bank Trust Company Americas, fka Bankers Trust Company, as Custodian moves the court:

1. For an Order granting creditor relief from the automatic stay of 11 USC section 362.

2. For such other and further relief as the Court finds just and proper.

Dated: 6-11-01.

Signed: /e/ Nancy A. Nordmeyer

SHAPIRO & NORDMEYER, L.L.P.  
Nancy A. Nordmeyer-121356  
Lawrence P. Zielke-152559  
Attorney for movant  
7300 Metro Boulevard #390  
Edina, MN 55439-2306  
(952) 831-4060

VERIFICATION

I, Dan Arntsen, the Bankruptcy Manager for Fidelity National Foreclosure Solutions, the authorized servicer for movant, the movant named in the foregoing notice of hearing and motion, declare under penalty of perjury, that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on:

6-8-04

Signed:

[Signature]

Fidelity National Foreclosure Solutions  
1270 Northland Drive, Suite 200  
Mendota Heights, MN 55120



11393887  
KLAUSER

Note

11393887

**ADJUSTABLE RATE NOTE**  
(LIBOR INDEX-RATE CAPS)  
**2-YEAR/6-MONTH LIBOR ARM**  
NON-CONFORMING

THIS NOTE CONTAINS PROVISIONS ALLOWING FOR CHANGES IN MY INTEREST RATE AND MY MONTHLY PAYMENT. MY ADJUSTABLE INTEREST RATE CAN NEVER EXCEED OR BE LESS THAN THE LIMITS STATED IN THIS NOTE.

November 29TH, 2001

New Hope

Minnesota

(city)

(state)

8615 154th Street West  
Savage, Minnesota 55378

(properly address)

**1. BORROWER'S PROMISE TO PAY**

In return for a loan that I have received, I promise to pay U.S. \$ 373,500.00 (this amount is called "principal"), plus interest, to the order of the Lender. The Lender is

**Saxon Mortgage, Inc**

I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder."

**2. INTEREST**

Interest will be charged on unpaid principal until the full amount of principal has been paid. I will pay interest at a yearly rate of 9.750%. The interest rate I will pay may change in accordance with Section 4 of this Note.

The interest rate required by this Section 2 and Section 4 of this Note is the rate I will pay both before and after any default described in Section 7(B) of this Note.

**3. PAYMENTS**

**(A) Time and Place of Payments**

I will pay principal and interest by making payments every month.

I will make my monthly payments on the first day of each month beginning on January 1ST, 2002.

I will make these payments every month until I have paid all of the principal and interest and any other charges described below that I may owe under this Note. My monthly payments will be applied to interest before principal. If, on December 1ST, 2031, I still owe amounts under this Note, I will pay those amounts in full on that date, which is called the "Maturity Date."

I will make my monthly payments at 4880 Cox Road, Glen Allen, Virginia 23060, or at a different place if required by the Note Holder.

**(B) Amount of My Initial Monthly Payments**

Each of my initial monthly payments will be in the amount of U.S. \$ 3,208.94. This amount may change.

**(C) Monthly Payment Changes**

Changes in my monthly payment will reflect changes in the unpaid principal of my loan and in the interest rate that I must pay. The Note Holder will determine my new interest rate and the changed amount of my monthly payment in accordance with Section 4 of this Note.

**4. ADJUSTABLE INTEREST RATE AND MONTHLY PAYMENT CHANGES**

**(A) Change Dates**

The interest rate I will pay may change on the first day of December, 2003, and on the first day of every sixth month thereafter. Each date on which my interest rate could change is called an "Interest Rate Change Date."

**(B) The Index**

Beginning with the first Interest Rate Change Date, my interest rate will be based on an Index. The "Index" is the average of interbank offered rates for six-month U.S. dollar-denominated deposits in the London market ("LIBOR"), as published in *The Wall Street Journal*. The most recent Index figure available as of the first business day of the month immediately preceding the month in which the Interest Rate Change Date occurs is called the "Current Index."

If the Index is no longer available, the Note Holder will choose a new index that is based upon comparable information. The Note Holder will give me notice of this choice.

Doc. No. A 544250

OFFICE OF THE COUNTY RECORDER  
SCOTT COUNTY, MINNESOTA

Certified Filed and/or Recorded on

04-03-2002 at 01:25 Receipt: 171451

Pat Boeckman, County Recorder 01

Fee: \$ 20.00

Registration tax of \$ 859.05 paid  
Treasurer's Receipt No. 171451  
Conservation Fee Paid

*James R. King* *as*  
County Auditor

Loan Number:  
11393887

MORTGAGE

Record and Return to:  
Meritech Mortgage Services, Inc  
4708 Mercantile Drive  
Ft. Worth, Texas 76137

THIS MORTGAGE ("Security Instrument") is given on November 29, 2001  
The mortgagor is  
George Kleuser and Lyn Kleuser, Husband and Wife

("Borrower"). This Security Instrument is given to  
Saxon Mortgage, Inc

which is organized and existing under the laws of The State Of Virginia, and whose  
address is 27121 Towne Centre Drive, Suite 230  
Foothill Ranch, California 92610 ("Lender"). Borrower owes Lender the principal sum of  
Three Hundred Seventy-Three Thousand Five Hundred and 00/100ths

Dollars (U.S. \$373,500.00).  
This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which  
provides for monthly payments, with the full debt, if not paid earlier, due and payable on  
December 1, 2031 and for interest at the yearly rate of 9.750

percent. This Security Instrument secures to Lender: (a) the repayment of  
the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the  
payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this Security

MINNESOTA-Single Family-FNMA/FHLMC UNIFORM INSTRUMENT

UNIFORM - 68(MN) (8/02)  
Page 1 of 8

Form 3024 8/00  
Amended 5/01  
Initials: *LLK* *LR*

VMP MORTGAGE FORMS - (800)521-7231

0501100042

Doc. No. A 544251

OFFICE OF THE COUNTY RECORDER  
SCOTT COUNTY, MINNESOTA

Certified Filed and/or Recorded on

04-03-2002 at 01:25 Receipt: 171451

Pat Boeckman, County Recorder 01

Fee: \$ 20.00

## ASSIGNMENT OF MORTGAGE

FOR VALUABLE CONSIDERATION,  
Saxon Mortgage, Inc.  
4880 Cox Road, Glen Allen, Virginia 23060

, a Corporation existing under the laws of  
The State of Virginia, Assignor (whether one or more), hereby sells, assigns and transfers to  
BANKERS TRUST COMPANY, AS CUSTODIAN

, Assignee  
(whether one or more), the Assignor's interest in the Mortgage dated November 29, 2001  
executed by  
George Klauser and Lyn Klauser, Husband and Wife

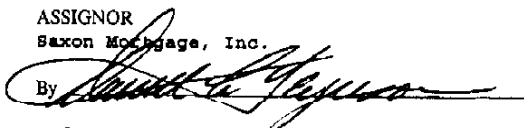
as Mortgagor, to Saxon Mortgage, Inc

as Mortgagee, and filed for record, as Document Number 544250  
(or in Book of Page), in the Office of the (County Recorder)  
(Registrar of Titles) of Scott County, Minnesota, together with all  
right and interest in the note and obligations therein specified and the debt thereby secured. Assignor covenants  
with Assignee, its successors and assigns, that there is still due and unpaid of the debt secured by the Mortgage  
the sum of  
Three Hundred Seventy-Three Thousand Five Hundred and 00/100ths

DOLLARS, with interest thereon from January 1, 2002, and that Assignor has good  
right to sell, assign and transfer the same.

Prepared By:  
Saxon Mortgage, Inc.  
4880 Cox Road  
Glen Allen, Virginia 23060  
Loan Number: 11393887

ASSIGNOR  
Saxon Mortgage, Inc.

By   
Its Assistant Vice President

By \_\_\_\_\_  
Its

THE STATE OF California )  
COUNTY OF Orange )

This instrument was acknowledged before me on November 29, 2001 by  
as Assistant Vice President of Saxon Mortgage, Inc. and  
Saxon Mortgage, Inc. as Assistant Secretary of

Commission Expiration: January 20, 2002

Signature of Person Taking Acknowledgment

Kimberly F. Gautney  
(Typed or printed name)

Notary Public Title or Rank  
Serial Number, if any

Minnesota Assignment of Mortgage 3/97  
VMP-895(MN) (8703) 1  
VMP MORTGAGE FORMS (800) 831-7281

00011000112

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re:

Case No. 03-30085-DDO

Chapter 13

George Klauser  
Lyn Klauser,

Debtor(s)

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**MEMORANDUM OF LAW**

Deutsche Bank Trust Company Americas, fka Bankers Trust Company, as Custodian ("Movant"), submits this memorandum of law in support of its motion for relief from the stay in the above-entitled matter.

FACTS

Movant holds a valid, duly perfected mortgage on real property owned by the Debtors. On the date this case was filed, the Debtor(s) were delinquent in respect of payments due under the note and mortgage. Since this case was filed, Debtor(s) are in arrears in the total amount of \$8,585.56.

ARGUMENT

1. Under Section 362.(d)(1) of the Bankruptcy Code, relief from the automatic stay shall be granted upon request of a creditor "for cause, including the lack of adequate protection of an interest in property of such creditor." 11 U.S.C. Sec. 362 (d) (1). The Debtor(s) in this case have failed to make the payments required by the note and mortgage for a period of more than one month. Debtor(s) have not otherwise provided Movant with adequate protection of its interest in the property. Such circumstances constitute cause, within the meaning of Section 362 (d) (1), justifying relief from the stay. In Re Video East, Inc., 41 B. R. 176 (Bkrtcy. E. D. Pa. 1984); In Re Frascatore, 33 B. R. 687 (Bkrtcy. E. D. Pa. 1983).

2. Pursuant to Section 362 (d) (2) of the Bankruptcy Code, relief from the stay is also appropriate where Debtor(s) have no equity in the subject property and the property is not necessary to an effective reorganization. 11 U.S.C. Sec. 362 (d) (2). See, In Re Gellert, 55B.R. 970 (Bkrtcy. D. N. H. 1983). In the present case the balance due Movant on the note and mortgage is \$383,986.69. [The property is encumbered by a second mortgage in favor of Chaska Building Center in the approximate amount of \$56,200.00.] The fair market value of the property is approximately \$415,000.00. Clearly, the Debtor(s) have no equity in the property.

Accordingly, Movant is entitled to an order terminating the stay and authorizing it to foreclose its mortgage on the property.



Dated: \_\_\_\_\_.

6-11-01

Respectfully submitted,  
**SHAPIRO & NORDMEYER, L.L.P.**

By: /e/ Nancy A. Nordmeyer  
Nancy A. Nordmeyer-121356  
Lawrence P. Zielke-152559  
Attorney for Movant  
7300 Metro Boulevard #390  
Edina, MN 55439-2306  
(952) 831-4060

SWORN CERTIFICATE OF SERVICE

STATE OF MINNESOTA       )  
                                      ) SS  
COUNTY OF HENNEPIN       )

I, **Stephanie Pilegaard** says that on June 14, 2004, I mailed copies of the annexed Memorandum of Law, Proposed Order for Relief from Stay, Notice of Hearing and Motion for Relief from Stay and Certificate of Service on the following interested parties at their last known address, by mailing to them, via first class mail, a copy thereof, enclosed in an envelope, postage prepaid and by depositing the same in the post office at Edina, Minnesota.

George Klauser  
8615 154th St West  
Savage, MN 55378

Lynn Klauser  
8615 154th St West  
Savage, MN 55378

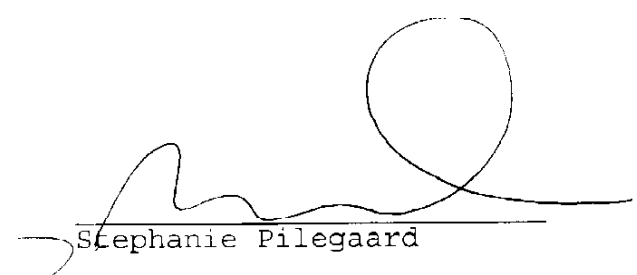
Kenneth Keate, Esq.  
1102 Grand Ave  
St. Paul, MN 55105

Jasmine Z. Keller, Trustee  
12 South 6th Street, #310  
Minneapolis, MN 55402

U.S. Trustee  
1015 U.S. Courthouse  
300 South 4th St.  
Minneapolis, MN 55415

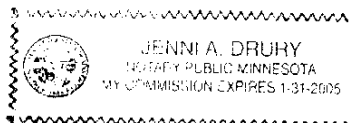
Chaska Building Center  
PO Box 89  
350 E. Hwy 212  
Chaska, MN 55318

AmeriCredit  
#416988707  
4000 Embarcadero  
Arlington, TX 76014N

  
Stephanie Pilegaard

Subscribed and sworn to before me June 11, 2004.

\_\_\_\_\_  
Notary



03-25897  
011393887

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:

Case Number BKY 03-30085-DDO

George Klauser  
Lyn Klauser,  
Debtor(s)

**ORDER FOR RELIEF FROM STAY**

The above-entitled matter came for hearing on July 7, 2004.

**THIS CAUSE** coming to be heard on the Motion of Deutsche Bank Trust Company Americas, fka Bankers Trust Company, as Custodian, a creditor in the proceeding, the Court having jurisdiction, due notice having been given, and the Court having been advised in the premises;

**IT IS HEREBY ORDERED,**

That the automatic stay heretofore entered in this case is modified to the extent necessary to allow Deutsche Bank Trust Company Americas, fka Bankers Trust Company, as Custodian, its successors and/or assigns, to foreclose the mortgage on the real property commonly known as:

Lot 4, Block 1, West Summit Oaks, Scott County,  
Minnesota

**NOTWITHSTANDING** Federal Rule of Bankruptcy Procedure 4001 (a)(3), this order is effective immediately.

**AND FURTHER,**

This order for relief shall not become null and void upon any subsequent conversion of this case.

Dated: \_\_\_\_\_

BY THE COURT:

\_\_\_\_\_  
Judge of Bankruptcy Court